

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

FRED ERBY,)	
)	
Petitioner,)	
v.)	Civil Action
)	No. 09-3235-CV-S-DGK-H
MARTY C. ANDERSON, Warden,)	
United States Medical Center for)	
Federal Prisoners,)	
Respondent.)	

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Petitioner, an inmate confined in the United States Medical Center for Federal Prisoners, petitions this Court for a writ of habeas corpus in which he challenges his confinement. The petition has been referred to the undersigned for preliminary review under 28 U.S.C. § 636(b). Because petitioner's claims are without merit and are not properly before this Court, it will be recommended that he be denied leave to proceed in forma pauperis.

As grounds for relief in habeas corpus, petitioner alleges that he is illegally in custody because he is no longer mentally ill. He also contends that the initial charges against him should be dismissed because he did not receive adequate notice of the charges against him.

A review of the file and records in the case indicates that petitioner was committed to the custody of the Attorney General, pursuant to 18 U.S.C. § 4246, by the United States District Court for the Western District of Missouri on October 15, 2008. United States v. Erby, 08-3022-CV-S-RED (W.D. Mo. 2008). The judgment was affirmed by the Eighth Circuit Court of Appeals on April 10, 2009. (Appeal No. 09-1284). Regardless of petitioner's assertions, the record indicates

that he is lawfully confined at the present time for mental health care and treatment pursuant to 18 U.S.C. § 4246. Additionally, any challenges petitioner seeks to make regarding the underlying criminal charges cannot be brought before this Court. Rather, to the extent, if any, that petitioner desires to advance this claim, it must be brought in the charging district. Therefore, it must be recommended that the petition for habeas corpus relief be dismissed without prejudice.

Counsel for the petitioner has filed a Motion to Withdraw. Because there are no issues presented for which relief is appropriate, the motion is granted.¹

For the foregoing reasons, it is, pursuant to the governing law and in accordance with Local Rule 72.1 of the United States District Court for the Western District of Missouri,

RECOMMENDED that petitioner be denied leave to proceed in forma pauperis and that the petition herein for a writ of habeas corpus be dismissed without prejudice.

/s/ James C. England
JAMES C. ENGLAND
Chief, United States Magistrate Judge

Date: 10/29/09

¹ Petitioner has 10 days to file exceptions to the Report and Recommendation of the United States Magistrate Judge.